

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: :  
MENZEL, : Docket #24cv860  
Plaintiff, :  
- against - :  
ROADGET BUSINESS PTE LTD., et al., : New York, New York  
November 7, 2024  
Defendants. :  
----- :

PROCEEDINGS BEFORE  
THE HONORABLE SARAH CAVE,  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-Direct</u>	<u>Re-Cross</u>
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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None

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2 THE COURT: Good morning, this is Magistrate  
3 Judge Cave. We're here for a conference in Menzel v.  
4 Roadget Business, case number 24cv860. May I have the  
5 appearances starting with plaintiff's counsel please.

6 MR. ANDREW GERBER: Yes, Your Honor, this is  
7 Andrew Gerber for plaintiff. I'm on the phone with my  
8 colleague Vanessa Sorrentino.

9 THE COURT: All right, good morning.

10 MR. GERBER: Good morning.

11 THE COURT: And for defendants.

12 MR. SCOTT SHAW: Scott Shaw on behalf of  
13 defendants.

14 THE COURT: Okay, good morning. So we have the  
15 parties joint status letter that lists a number of  
16 issues that were raised or documented in the Court's  
17 post-conference order from last time. I would like to,  
18 just in terms of the agenda, start today with the items,  
19 the six items that were listed in the Court's post-  
20 conference order from October 1, and then we'll turn to  
21 the financial information that the plaintiff is seeking  
22 from the defendants. Then we'll talk about scheduling  
23 including scheduling of depositions, and we'll touch on  
24 the motions for leave to amend as well.

25 So, Mr. Gerber or Ms. Sorrentino, may I start

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2 with you. It seems like with respect to the six  
3 categories in the Court's post-conference order, the  
4 defendants say that they have produced something. I  
5 understand that you're not happy with it. But what are  
6 you claiming is missing from the six items that the  
7 Court ordered in the post-conference order from October  
8 1?

9 MR. GERBER: Yes, thank you, Your Honor, this  
10 is Andrew Gerber. I guess the first one is transaction  
11 data. I want to flag that defendants have flagged this  
12 as attorney's eyes only. So I'll defer to defendants as  
13 to whether they want to have this portion of the  
14 discussion be off the record or move to seal it later  
15 on, but I want to just flag that just to be fully  
16 transparent and comply with the protective order.

17 THE COURT: Okay, well, proceed, and then when  
18 you get the transcript, if there's anything that needs  
19 to be marked confidential, you could do so.

20 MR. GERBER: Understood. So the transaction  
21 data that defendants produced is glaringly inconsistent.  
22 So we knew on the documents defendants produced that  
23 there are over 700,000 units of infringing products that  
24 were ordered and stored by defendants. However, the  
25 total data they produced to date only covers 210,860

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2 transactions. So there's a little under 500,000  
3 transactions that are missing. In the other parallel  
4 cases, this has not been an issue. There's been, it's  
5 been consistent. The difference is here, there's this  
6 pretty glaring anomaly between what we know the total  
7 units sourced are and the total transaction at issue.

8 So we're just trying to figure out why there is  
9 this 500,000 transaction discrepancy, what's missing,  
10 why is it missing. We have not gotten any information  
11 about that.

12 THE COURT: Were there some transactions that  
13 involved multiple units or is it a unit transaction, is  
14 it a one-for-one --

15 MR. GERBER: It's a one-for-one, Your Honor.

16 THE COURT: Okay. Mr. Shaw.

17 MR. SHAW: I'd have to ask my client to look  
18 into it because I'm not, this is the first I've heard of  
19 it. But Mr. Gerber is making that representation and  
20 you said that it hadn't been an issue in the other case,  
21 it's probably something that I can look into and get a  
22 response to him very quickly. The one thing that my  
23 client is typically able to turn around and in a  
24 reasonable amount of time is information regarding to  
25 transactional data. It's not an overly burdensome item.

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2 So I don't expect that would be an issue.

3 THE COURT: Okay.

4 MR. SHAW: I'll have to look into that and get  
5 Mr. Gerber an answer. I just don't have an answer for  
6 you on the call today because it's the first I heard of  
7 it.8 THE COURT: Very good, thank you. So we'll put  
9 that on the follow-up list. What's next, Mr. Gerber?10 MR. GERBER: Documents regarding how the 107  
11 products were created, designed, and sourced. They've  
12 produced nothing on this. They say none exist, but they  
13 have these for some products, for about 31 products we  
14 have this information, but there's 107 products for  
15 which they have not. So, again, we're not sure why  
16 these documents are missing. If defendants wants to  
17 take the position, I know Your Honor mentioned this  
18 before, look, if defendants say, look, these documents  
19 don't exist, understand, this is sort of why depositions  
20 are necessary if we want, if defendants' position is we  
21 just don't have these documents, fine, at a certain  
22 point we can't keep pushing that. We need to take  
23 depositions and ask the deponents well, why is that the  
24 case.

25 THE COURT: Okay, last chance, Mr. Shaw. Are

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2 you going --

3 (interposing)

4 THE COURT: -- otherwise we got to move on.

5 MR. SHAW: I understand. We don't have  
6 documents.7 THE COURT: Okay, but just be warned if you sit  
8 down for the deposition and this witness, your witness  
9 miraculous says oh, yeah, we do have those documents,  
10 here are they, and then you need to produce them, and  
11 the witness needs to come back, that's going to be at  
12 your client's expense. Just consider the warning.

13 MR. SHAW: Yes, I understand.

14 THE COURT: Okay, thank you. Next.

15 MR. GERBER: Thank you, Your Honor. And to be  
16 clear, we're trying to be cooperative and resolve this  
17 and appreciate that. The next is an organizational  
18 chart showing the relationship between defendants. One  
19 was produced, it's inaccurate. We know that defendant  
20 Fashion Choice ownership is not correctly shown in the  
21 chart. In addition, the chart is missing the defendant  
22 Zoetop. So, again, they were ordered to produce a  
23 complete accurate chart, they have not.

24 THE COURT: Mr. Shaw.

25 MR. SHAW: The org chart we produced is what we

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2 produced. I guess, I mean we've produced a responsive  
3 document. If he thinks it's inaccurate, I guess that's  
4 an argument. I don't know if it's per se a discovery  
5 dispute. And with respect to Zoetop I have not been  
6 able to locate one.

7 THE COURT: Okay, why don't you ask the witness  
8 about this in the deposition, Mr. Shaw, or Mr. Gerber.  
9 Okay?

10 MR. GERBER: Sure. Just to be clear, this is  
11 an attorney created documents, and it's just literally  
12 missing information. Missing defendant Zoetop. So, you  
13 know, I'm not sure why that's the case, but, sure, if  
14 that's absolutely something that I can ask the witness,  
15 and they'll confirm that, in fact, one of the parties is  
16 missing. But happy to defer to deposition.

17 THE COURT: Okay, thank you.

18 MR. GERBER: And then communication - sorry,  
19 number two, moving on, was communications both with  
20 plaintiff and concerning plaintiff's infringement  
21 allegations. There's been no privilege log produced,  
22 and my understanding is that defendants are saying,  
23 well, these are all privileged communications. We  
24 haven't seen any and we have no privilege log. So if  
25 defendants are going to take that deposition, we need to

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2 have a privilege log, and nothing's been provided.

3 THE COURT: Okay, Mr. Shaw, are you preparing a  
4 privilege log?

5 MR. SHAW: Yes. Can I get clarity on that?

6 Communications regarding what issue?

7 THE COURT: Plaintiffs and her complaints of  
8 infringement.9 MR. SHAW: Okay. Yeah, so we produced the  
10 correspondence, and then we're talking about the - yeah,  
11 I can prepare a privilege log, sure.12 THE COURT: Okay, how long do you need to do  
13 that, two weeks?

14 MR. SHAW: That'd be great, yeah.

15 THE COURT: Okay. Very good.

16 MR. GERBER: And just to clarify, to answer the  
17 question, every time plaintiff reported the infringement  
18 to Shein which she did repeatedly, we just want to know,  
19 you know, among other things, what was Shein's response,  
20 what were the communications internally about that.21 THE COURT: Okay, is there additional  
22 correspondence, Mr. Shaw, that is not privileged that  
23 you haven't produced or are you saying anything that you  
24 haven't produced is privileged?

25 MR. SHAW: What we produced is non-privileged.

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2 I have not seen privileged communications, but to the  
3 extent they exist, I will be logging those within two  
4 weeks.

5 THE COURT: All right. Okay, so you either  
6 have what there is or you're going to get a log of it,  
7 and then you can, if there's issues with the log, Mr.  
8 Gerber, you can (indiscernible).

9 MR. GERBER: Understood, thank you, Your Honor.

10 THE COURT: Great, next.

11 MR. GERBER: Then the last two, defendants'  
12 terms and conditions, and the results of the defendants'  
13 review process. We have not gotten these for the  
14 former, we have not gotten them without explanation.  
15 And then for the review process documents, we're missing  
16 these for many products, (indiscernible) said some don't  
17 exist. Again, for these two things, if defendants'  
18 position is, in fact, these don't exist, these, again,  
19 are items that we can ask about in deposition without  
20 having to push this further.

21 THE COURT: Okay, I thought Mr. Shaw said in  
22 his response that they did produce their internal  
23 records, I'm looking at page 4 of the letter, internal  
24 records regarding the results of their product review  
25 process. Is that correct, Mr. Shaw?

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2 MR. SHAW: Yes.

3 THE COURT: And then a little bit earlier in  
4 that paragraph, they say they've produced the current  
5 and archived terms and conditions. Are you just not  
6 sure where those are in the production, Mr. Gerber, or  
7 you've seen them and that's not what you're looking for?

8 MR. GERBER: So I'll answer the (indiscernible)  
9 first. They produced only single version of those, and  
10 we know there's multiple versions or we're missing other  
11 versions if they don't have the version, they can make  
12 confirm that, and we'll ask about that in depositions.  
13 And then as for the product review process, we're  
14 missing that for over 20 of the product at issue. We  
15 have no product review process documents.

16 THE COURT: Mr. Shaw.

17 MR. SHAW: Yes, I mean if they don't exist, we  
18 can't produce them. So we've produced what we have, but  
19 I think Mr. Gerber's right, you can ask about those  
20 issues in deposition as we discussed with I think it was  
21 point number 2, we're adding 107. And terms and  
22 conditions, the thing that other versions exist, I'm not  
23 aware of that, but I'll follow up and ask my clients if  
24 there are any additional versions that we have. I'm  
25 just thinking aloud right now.

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2 THE COURT: I'll include it in the post-  
3 conference order as well.

4 MR. SHAW: Okay.

5 THE COURT: I think that's everything from the  
6 October 1 order, Mr. Gerber. Anything else?

7 MR. GERBER: Yes, Your Honor, so missing SKU's.  
8 So there were - defendants produced hundreds of  
9 documents about each of the products, and we discussed  
10 this at the last conference. It wasn't in order. And  
11 defendants agreed at the last conference that they would  
12 provide the SKU's for each of the products because right  
13 now what we have are, we have these documents, you know,  
14 documents for each product but we don't know the product  
15 to which they apply. So we have information but no  
16 product link, and so it's impossible for us to  
17 understand the product that it applies to. And  
18 defendants at the last conference said they would  
19 provide the SKU list corresponding to each of the  
20 documents, and we have not gotten that yet. I think  
21 that would be a much more efficient way of dealing with  
22 this than having to go through 300 documents in a  
23 deposition asking which document, which product is each  
24 applied to.

25 THE COURT: Sure. A SKU list, Mr. Shaw.

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2 MR. SHAW: Yeah, we've done that before. We  
3 can do that. It takes a bit of time, but we can  
4 definitely do that.

5 THE COURT: Great.

6 MR. SHAW: It's something that we're going to  
7 have to do and create because some of the documents that  
8 we produced that relate to a particular SKU don't  
9 identify the SKU on the document. So we can do that,  
10 you know, the timing of which we can do that, I would  
11 say maybe like, you know, two to three weeks maybe.

12 THE COURT: Why don't we say three, okay.

13 MR. SHAW: Okay.

14 THE COURT: Thank you.

15 MR. SHAW: Thanks.

16 THE COURT: All right, Mr. Gerber.

17 MR. GERBER: Great. And then the last issue is  
18 so the server location, this one is critical. So I'd  
19 like to explain why it's so important. We've alleged  
20 that we're entitled to ex-U.S. profits from sales  
21 outside the U.S., and our understanding is that these  
22 are essentially well in to the seven figures. So a very  
23 huge chunk of damages are outside the U.S. We've  
24 alleged that there is a predicate act in the U.S. that  
25 allows us to seek those ex-U.S. damages. The location

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2 of defendants' servers, so where they're hosting these  
3 websites at issue and products at issue on the websites  
4 that are at issue here, we've alleged that these are in  
5 the U.S. And as a result, that is a predicate act in  
6 the U.S. Defendants have not moved to dismiss that  
7 component of our complaint.

8 And the response on the discovery issues,  
9 defendants have stated that this is public information  
10 that we could obtain publicly and that they don't have  
11 to produce it. Unfortunately, that's just not the case.

12 So defendants' websites, like many commercial  
13 large websites, use what's called proxy servers. They  
14 use Cloudflare as one of them. Essentially, these third  
15 parties that are a proxy, so that people visiting their  
16 site don't actually see the location of or information  
17 about your company's servers. There's a variety of  
18 reasons to do this just to conceal the location,  
19 security, among other things. So we the public have no  
20 way of knowing where the actual servers are located  
21 because of these proxy servers.

22 And so this is information that's obviously in  
23 defendants' possession. They know where their servers  
24 are. They can just tell us. If they want to stipulate  
25 that they're in the U.S., we're fine with that. If they

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2 want to produce these documents confirming where they  
3 are, we're fine doing that too. But this is pretty  
4 simple information that we think we are absolutely  
5 entitled to receive.

6 THE COURT: All right, Mr. Shaw.

7 MR. SHAW: Okay, this is the first I've heard  
8 Mr. Gerber offer some options. I just want to make sure  
9 I'm clear so I can go back to my client. You said if we  
10 could stipulate to where they're located, that would be  
11 fine, and then there was another option that I don't  
12 think I heard.

13 THE COURT: I think he said either --

14 (interposing)

15 MR. GERBER: We --

16 THE COURT: -- stipulate to the location or if  
17 you had documents showing where they were.

18 MR. SHAW: Okay.

19 MR. GERBER: Stipulate that they're in the  
20 U.S., to be clear. If you're willing to stipulate  
21 they're in the U.S., we're fine with that. And we have  
22 raised this multiple times. If you want to stipulate  
23 that the servers are in the U.S., that's fine. That  
24 resolves the issue. If not, then we would need to see  
25 the documents showing where the servers are actually

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2 located.

3 THE COURT: You want to discuss it with your  
4 client and get back to Mr. Gerber in two weeks?5 MR. SHAW: That's fine. I'm writing notes  
6 right now. It wouldn't be sufficient to a stip or a  
7 declaration just attesting to where they are if they're  
8 not in the U.S.?9 MR. GERBER: No, we would want to see  
10 documentation of that. But because our position is  
11 they're in the U.S. So if you want to stipulate to the  
12 fact that the servers are in the U.S., that cuts the  
13 corner and resolves this. That's fine. But if not, if  
14 you won't stipulate that they're in the U.S., we're  
15 going to need to see discovery on this and examine where  
16 you're claiming they're located.17 THE COURT: Why is it that you believe - what's  
18 the basis, Mr. Gerber, for believing that they're in the  
19 U.S.?20 MR. GERBER: We've seen allegations, we've seen  
21 statements elsewhere that Shein has moved operations to  
22 the U.S. We know they're moving operations to the U.S.  
23 We believe that they are conducting business in the  
24 U.S., and they have, some of the defendant entities do  
25 have locations in the U.S. Shein Technology, for

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2 example, is a U.S.-based defendant, and so we believe  
3 that they are, at least with Shein Technology defendant,  
4 server locations, documents, and conduct in the U.S.  
5 that would constitute predicate acts here.

6 THE COURT: Okay. All right, so, Mr. Shaw,  
7 you'll discuss it with your client and you can --

8 MR. SHAW: Yeah.

9 THE COURT: -- inform Mr. --

10 MR. SHAW: I'll either - yes, I'll propose the  
11 two options, either stipulation if servers are in the  
12 U.S. or documents to show that they are outside the  
13 United States.

14 THE COURT: Great. Okay, thank you. Mr.  
15 Gerber, are we up to global --

16 MR. GERBER: That --

17 (interposing)

18 MR. GERBER: That's it I think at this point as  
19 far as the open written discovery issues.

20 THE COURT: So elaborate for me more. I have  
21 obviously your letters on the global revenue, and in  
22 your letter you're seeking this discovery has narrowed  
23 it to a stipulation. Can you describe exactly what  
24 you're proposing the stipulation would say?

25 MR. GERBER: You're asking me, Your Honor?

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2 THE COURT: Yes.

3 MR. GERBER: Andrew Gerber?

4 THE COURT: Yes.

5 MR. GERBER: Yeah, global revenues are  
6 concerned, we would be fine having defendants provide  
7 the exact same stipulation they provided in the other,  
8 the parallel case, in Keller, which is essentially they  
9 stipulated to a floor, and, you know, we mentioned  
10 confidentiality (indiscernible) discussed here, and they  
11 stipulated to a floor, (indiscernible), Scott, of global  
12 revenues of \$6 billion. And our understanding was in  
13 excess of \$6 billion was the language.14 We responded, well, in excess is, as a  
15 qualifier, it's, we believe it's actually, you know,  
16 five to six times that, but eventual resolution in  
17 Keller through Judge Netburn was, look, 6 billion is  
18 high enough such that it's not going to move the needle  
19 much if it's 6 billion or 30 billion, and we agreed with  
20 that, and we agreed to accept the stipulation as to \$6  
21 million. And we're just doing that here too.

22 THE COURT: Okay. Mr. Shaw, can we --

23 MR. SHAW: I can't get into the issues in the  
24 Keller case because there were things on the record or  
25 off the record that are unique to that particular case.

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2 I can say the only time it's actually been briefed and  
3 decided was the Fitzpatrick case, and the judge denied  
4 Mr. Gerber's request. My client's not willing to  
5 provide that stipulation for a number of reasons, and  
6 those reasons primarily are set forth in our position,  
7 in our letter. It's not proportional, it's not  
8 relevant, it has, it's going to have no bearing on the  
9 issues that are going to be litigated in the case if the  
10 case is ever litigated.

11 (interposing)

12 THE COURT: Hold on. Mr. Shaw, is the floor in  
13 this case the same as it is in Keller or is it a  
14 different number?

15 MR. SHAW: To be honest, Your Honor, I don't  
16 have the Keller file up in front of me. I don't even  
17 know what the number is and what would be the same.

18 (interposing)

19 THE COURT: -- you said it was 6 billion.

20 MR. SHAW: Mr. Gerber said that. I don't  
21 recall. I don't have it in front of me. I don't know  
22 what the answer is.

23 THE COURT: Is it the same websites in Keller  
24 as in this case?

25 MR. SHAW: The Shein would be the same.

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2 THE COURT: Okay. And you did enter into a  
3 stipulation in Keller and --

4 MR. SHAW: No, we had proposed a stipulation  
5 that wasn't sufficient according to Mr. Gerber, and it  
6 was not sufficient for the court. So no stipulation was  
7 entered. We had simply proposed, we had simply provided  
8 a proposal to Mr. Gerber which he rejected.

9 THE COURT: Right, but he's saying now he's  
10 willing to accept what you proposed in Keller which is a  
11 floor of 6 billion. Are you paying attention, Mr. Shaw?  
12 Are you listening or are you doing something else while  
13 we're talking? You said --

14 MR. SHAW: I'm not --

15 THE COURT: -- he's willing to accept what you  
16 proposed in Keller, which is a stipulation that your  
17 global revenue was in excess of 6 billion. My question  
18 is are you - whether it was finalized in Keller or not,  
19 are you and your client willing to enter into a  
20 stipulation with a floor of global revenue of 6 billion?

21 MR. SHAW: No.

22 THE COURT: All right. Well, I'm going to  
23 order that you do because I find, first of all, the  
24 cases that you cite in your letter are inapposite. You  
25 cite cases that are wage and hour cases, not cases like

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2 this one, not copyright cases. Second of all, I've  
3 reviewed the plaintiff's cases, and the plaintiff's  
4 cases support courts requiring disclosure. It's another  
5 issue what the jury sees, but we're just talking about  
6 discovery here, of the size of the global revenue of the  
7 defendant. And I think so it is relevant and it has  
8 been ordered by other courts including in, I'm not sure  
9 how you pronounce it, the Psihoyos, P-S-I-H-O-Y-O-S,  
10 where the court acknowledged that larger defendants and  
11 the amount of their financial resources are relevant to  
12 the quantification of statutory damages that may be  
13 awarded. In particular, the district court decision in  
14 that Psihoyos case noted that statutory damages have to,  
15 quote, "hurt the offender's pocketbook enough for him or  
16 her to take notice." And so for that reason the global  
17 revenues are relevant. I'm not predetermining whether  
18 it's admitted to the jury, it's another question, but  
19 just in terms of whether it is disclosed.

20 It also goes, as the plaintiffs point out in  
21 their letter, to the sophistication of the defendants  
22 and the jury determination of the state of mind of the  
23 defendants when they allegedly engaged in the infringing  
24 behavior.

25 So, Mr. Gerber, you can propose or provide to

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2 Mr. Shaw a stipulation that, and I don't know if it's 6  
3 billion but whatever the number is that the defendants'  
4 global revenue for the websites that are at issue in  
5 this case is in excess of X dollars. And so you can  
6 provide that to Mr. Shaw, and my hope is that,  
7 consistent within the Court's ruling here on the record  
8 today, that the parties can finalize that language. And  
9 if a stipulation works or a declaration, whatever is  
10 preferable, but some piece of evidence that provides  
11 the defendants, the floor of the defendants' global  
12 revenues for the websites at issue in this case. And so  
13 that's the Court's ruling on ECF number 79.

14 Next, are there disputes still about scheduling  
15 depositions?

16 MR. GERBER: This is Andrew Gerber, Your Honor.  
17 I think it makes to sort of talk that through. There  
18 have been some rulings in the other parallel cases  
19 within the last 18 hours. So I think it's helpful to  
20 talk about that.

21 So in the Fitzpatrick case Judge Furman ordered  
22 depositions to proceed before settlement conference and  
23 to happen before January 31. We have three depositions  
24 that are going to be happening, and we're working with  
25 Mr. Shaw to schedule those likely in early December. In

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2 the Amore case Judge Caproni last night issued an order  
3 granting our request similar. Depositions are to  
4 proceed there by the end of December and also to do so  
5 before settlement conference there, and, again, that was  
6 last night. We've emailed Mr. Shaw, and we're going to  
7 be working with him over the next couple of days to try  
8 to get all those scheduled.

9 All that to say, the parties November and  
10 December went from open to quite booked. And so I think  
11 at this point, also given the fact that we have the  
12 pending motion to amend that we thought was going to be  
13 stipulated to but it was not, at this point it probably  
14 makes sense to, you know, I know that Your Honor gave  
15 defendants some weeks to comply with some discovery  
16 issues here. If we aim to schedule depositions here,  
17 I'd say late January into February, that's fine with  
18 plaintiff.

19 THE COURT: Mr. Shaw.

20 MR. SHAW: Yeah, I mean I agree with part of  
21 what Mr. Gerber said with respect to Fitzpatrick and the  
22 Amore cases and the depositions that were ordered.  
23 We've had three defense depositions in Fitzpatrick. We  
24 also have a plaintiff's deposition. In Amore there'll  
25 possibly be more than three, and we'll have a

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2 plaintiff's deposition. The judge, Judge Furman in  
3 Fitzpatrick also had told Mr. Gerber to coordinate  
4 regarding all cases to make sure the schedule's  
5 sufficiently done, and he had at least expressed some  
6 interest in my proposal regarding certain phases and  
7 making things sufficient.

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2 little bit. But I went back and looked at the  
3 transcript of the last conference, Mr. Shaw, and you  
4 said that you would stipulate. What's changed?

5 MR. SHAW: When I saw the - yes, I recall that  
6 as well, Your Honor. I had to look at that. What I  
7 received is not what I was expecting to receive when I  
8 saw the proposed amended complaint. So I couldn't  
9 stipulate.

10 THE COURT: All right --

11 (interposing)

12 MR. SHAW: In part because --

13 THE COURT: -- are you proposing --

14 (interposing)

15 MR. SHAW: Because the defendants --

16 THE COURT: Are you filing an opposition to the  
17 motion for leave to amend?

18 MR. SHAW: No, I don't represent - there's a  
19 new party added, there's different allegations that were  
20 made that were stricken and taken out were in the notice  
21 and the time they learned of the infringement or the  
22 alleged infringement. So I can't stipulate, but I don't  
23 imagine filing an opposition to it either.

24 THE COURT: Okay.

25 MR. SHAW: Oh, one other thing, Your Honor, in

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2 terms of you're asking about depositions and if we're  
3 going to be pushing them out till, you know, January or  
4 February, we would have availability and per the letter  
5 that I had submitted, you know, ask the Court to set a  
6 scheduling or, sorry, a settlement conference to have  
7 Christina Menzel have an opportunity to, you know, hear  
8 what we have to offer in terms of a settlement to see if  
9 she has interest.

10 THE COURT: Well, you can do that at any time.  
11 You don't need a settlement conference with me. And at  
12 this point I don't really have any dates in December  
13 that I can offer you in any event. The rest of my year  
14 is pretty much booked. So if you want a settlement  
15 conference with me, we'd be looking at January at this  
16 point. January 14 or 15 I have availability in the  
17 afternoon those days.

18 MR. SHAW: I mean --

19 THE COURT: I'm not going to be put a stay of  
20 depositions in place in the meantime. I mean it sounds  
21 like you have a little bit of (indiscernible) anyway,  
22 and I would also encourage you to consider, to the  
23 extent we're dealing with 30(b)(6) topics that are the  
24 same across all of the cases, I can't require you to do  
25 this, but, Mr. Gerber, you might consider whether, is it

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2 Mr. Wade, for example, if he's going to be a 30(b)(6)  
3 witness in one case, maybe you can do all the 30(b)(6)  
4 topics that are the same across the cases just with him  
5 in one day or one morning or one part of a day. And  
6 then have different times for him to do either his  
7 individual knowledge or topics that are unique to  
8 different cases.

9 I'm just saying that if it's the same witness,  
10 the same Rule 30(b)(6) witnesses for multiple cases,  
11 there may be a way for the parties to do this, and I'd  
12 encourage on the call tomorrow to talk about whether  
13 that's possible so that you're not asking the same  
14 questions over and over again and that you can kind of  
15 cross-designate a transcript in multiple cases. You  
16 understand what I'm saying?

17 MR. GERBER: I do. We're happy to talk to Mr.  
18 Shaw about that tomorrow.

19 THE COURT: Okay. All right --

20 MR. GERBER: If I could respond to settlement  
21 conference - sorry, Your Honor.

22 THE COURT: No, go ahead. Go ahead.

23 MR. GERBER: Plaintiff is, of course, open to a  
24 settlement conference, but as Your Honor is aware, as  
25 seen today, there's still a huge amount of critical

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2 discovery open, and it's not just for the sake of  
3 getting discovery, these are sales numbers, this goes to  
4 willfulness, this is critical to understanding the full  
5 value of the case, and plaintiff just doesn't want to go  
6 into a settlement conference without having that full  
7 information understanding the full scope and the full  
8 damages of the case. So, yes, while we are certainly  
9 amenable to discussing scheduling a settlement  
10 conference, we need to have depositions first and  
11 address some of these outstanding discovery issues  
12 first. And, in fact, defendants have raised the same  
13 issue in Fitzpatrick and they've raised it in Amore, and  
14 the judges have last week ordered depositions to happen  
15 before settlement conference is scheduled.

16 THE COURT: Yeah, I think --

17 MR. SHAW: Your Honor --

18 THE COURT: Go ahead. Go ahead, Mr. Shaw.

19 MR. SHAW: Yeah, Your Honor, Mr. Gerber has  
20 made the exact same representation. He always says in  
21 every case that he filed against my clients that there's  
22 critical documents missing and there's massive amounts  
23 of information he needs to engage in settlement  
24 discussions. But miraculously, when the judges order  
25 his clients, his individual clients to appear, what

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2 happens in the two cases? In Keller and Wildfire, the  
3 cases settled, and he didn't have depositions in those  
4 cases. So while he, as the attorneys for his clients,  
5 makes these statements about needing the information, it  
6 doesn't appear, at least from the cases that have  
7 settled, that his clients actually do because those  
8 cases settled when he made the same representations but  
9 only when ordered that his clients actually then come to  
10 the table and settle.

11 And while you're right, Your Honor, that I can  
12 propose numbers and propose to discuss settlement, I've  
13 done that in every case time and time again. And Mr.  
14 Gerber won't engage with me until he's ordered by the  
15 court to do so.

16 THE COURT: Well, the bottom line is the  
17 earlier dates I can offer you are the afternoons of  
18 January 14 or 15, so --

19 (interposing)

20 MR. SHAW: We'll take them, Your Honor.

21 THE COURT: -- do you want to pick one of  
22 those, but all the documents should get done in the  
23 meantime. There's no reason that we shouldn't, that we  
24 can't, that you two can't discuss at a minimum cross-  
25 designating or cross-coordinating the witnesses that are

1 PROCEEDINGS 30  
2 taking place, whether that information can be used in  
3 multiple cases including this one. And to the extent  
4 that your clients have availability in early January and  
5 the two weeks before the settlement conference, we  
6 should go ahead and get depositions done. There's no  
7 reason that they can't. I know that Judge Furman  
8 ordered I think that there are at least three or four  
9 depositions take place before the settlement conference  
10 in that case. I don't know that the plaintiff needs all  
11 five of the witnesses who are listed, I think it was  
12 five. Ms. Perez, Ms. Wong, Mr. Cantrell, Ms. Lu, and  
13 Ms. Lee. I don't know that, Mr. Gerber, you need all  
14 five of those before the depositions, but if you want to  
15 at least do the 30(b)(6) and two others before the  
16 settlement conference, I think that's reasonable.

17 MR. GERBER: We're fine with that, Your Honor,  
18 yes.

19 THE COURT: Okay. So we will direct that the  
20 30(b)(6) and two fact witness depositions take place  
21 before the settlement conference. As between the 14<sup>th</sup>  
22 and the 15<sup>th</sup> of January, Mr. Gerber, do you have a  
23 preference?

24 MR. GERBER: So I mean I know that we and my  
25 clients are not available the first two weeks of January

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2 due to holidays and existing commitments, so that's just  
3 not going to be possible for us.

4 MR. SHAW: If those aren't possible, Your  
5 Honor, we have to push into like late February to do  
6 depositions. Just because of the Chinese New Year, it's  
7 not possible to get my witnesses in late January or  
8 through mid-February. And I need time to get out there  
9 to prep them and then to have the depositions and then  
10 we'll have to do a settlement conference. Which is why  
11 I thought it would make sense to do a settlement  
12 conference early, it doesn't hurt to take a shot, see if  
13 it settles. If it doesn't, we can move forward to  
14 depositions. It's certainly more efficient.

15 THE COURT: Well, so, Mr. Gerber, you're saying  
16 you can't do January 14 or 15 for a settlement  
17 conference?

18 MR. GERBER: That's correct. There's schools I  
19 think don't come back until the second, the early second  
20 week of January, and then we have existing, there's  
21 other existing settlement conferences and other  
22 commitments that second week.

23 MR. SHAW: The 14<sup>th</sup> and 15<sup>th</sup> is the third week  
24 of January, just to be clear.

25 THE COURT: Third week in January, yeah.

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2 MR. SHAW: I'm looking at my calendar, it looks  
3 like the third week.

4 THE COURT: What about, well, would your  
5 clients be able to participate - the week of January 27  
6 is that in the Chinese holidays?

7 MR. GERBER: I'm sorry, to be clear, yeah, it's  
8 that, I'm sorry, I meant to say the first full week of  
9 January is when, you know, school resumes, and then  
10 there's commitments that second full week of January.

11 THE COURT: So what about the week of the 27<sup>th</sup>?

12 MR. GERBER: Of January? That works for us. I  
13 can check with my client, but I believe that does work  
14 for us.

15 THE COURT: Okay.

16 MR. SHAW: For purposes of the settlement  
17 conference, yes, my client who is located in the United  
18 States can participate in a settlement conference on the  
19 27<sup>th</sup> of January. I'm assuming that week, I would have to  
20 check the dates.

21 THE COURT: I can't do the 27<sup>th</sup>, but I could do  
22 the afternoon, I'll give you the afternoon on Tuesday,  
23 Wednesday, or Thursday, 28<sup>th</sup>, 29<sup>th</sup>, or 30<sup>th</sup>.

24 (interposing)

25 MR. SHAW: I'll check with my clients --

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2 MR. GERBER: To be clear, this is going to have  
3 to happen after the 30(b)(6) and two fact witness  
4 depositions, so as long as --

5 THE COURT: The three depositions are going to  
6 take place before that. So you're going to have to  
7 figure out your schedule and make it happen, Mr. Gerber.  
8 You're the one who wants the depositions, and I'm giving  
9 you more, I'm pushing the settlement conference off. So  
10 you need to find a way to make this work.

11 MR. GERBER: That's fine. We have the second  
12 half of January free and can try to schedule depositions  
13 within that period.

14 THE COURT: Great.

15 MR. GERBER: Before the settlement conference.

16 MR. SHAW: We only have the January 6 through  
17 January 17, we have that two-week window is open for us.

18 THE COURT: Okay, well, that's a lot of time.  
19 It's only three depositions. All right, so it's hard  
20 for me to hold a lot of dates open because I have other  
21 things going on, but I can hold open the afternoon of  
22 January 28 and the afternoon of January 29. Can you  
23 confer with your clients and get back to me by tomorrow?

24 MR. SHAW: Yes, Your Honor. I have a call with  
25 my clients today, so I'll ask. 28<sup>th</sup> and 29<sup>th</sup> afternoons?

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2 THE COURT: 28<sup>th</sup> and 29<sup>th</sup> starting at 2.

3 MR. SHAW: Okay, 2 p.m. eastern, okay.

4 THE COURT: And would --

5 (interposing)

6 MR. SHAW: And I assume that would be remote?

7 THE COURT: Well, where is everybody? Where is  
8 Ms. Menzel, Mr. Gerber?

9 MR. GERBER: She's in Germany.

10 THE COURT: Okay. So we could, well, would she  
11 want the morning then because there's a time - we could  
12 do the morning on the 29<sup>th</sup>?

13 MR. GERBER: Yes.

14 THE COURT: Okay. All right, so can you -  
15 backtracking a little bit, check on the morning of the  
16 29<sup>th</sup> or the morning, I could do the morning of the 30<sup>th</sup>.  
17 So change course a little bit for you. So morning  
18 starting at 10 a.m. on either January 29 or January 30  
19 for a settlement conference.

20 MR. SHAW: Okay, should we email chambers if we

21 --

22 (interposing)

23 THE COURT: Yeah, email chambers and copy your  
24 counterpart there. So then obviously we'll wait for the  
25 time to expire on motion for leave to amend, but if it's

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2 not opposed, it's going to happen. And what we'll do  
3 since the settlement conference is not going to be till  
4 the end of January, we'll extend fact discovery to the  
5 14<sup>th</sup> of February so that if the case doesn't settle,  
6 you'll have two weeks after that to try to get the  
7 depositions in or we'll reassess where we are and what  
8 needs to get done at that point in time. Okay?

9 MR. SHAW: Okay.

10 MR. GERBER: Thank you, Your Honor.

11 THE COURT: Mr. Gerber, anything else on your  
12 list that we haven't covered?

13 MR. GERBER: Nothing for plaintiff, Your Honor.

14 THE COURT: Okay, Mr. Shaw.

15 MR. SHAW: Nothing for defendants, Your Honor,  
16 thank you.

17 THE COURT: Thank you, you'll see a post-  
18 conference order from us with instructions. What I  
19 would say is, you know, you're going to have the call  
20 between you to tomorrow about scheduling depositions, if  
21 there's - I wasn't - since you do have a bust November  
22 and December, I wasn't going to put another status call  
23 on, but if things go off the rails, ask for that sooner  
24 rather than later so that we can get on the phone before  
25 the end of the year. Okay?

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2 MR. SHAW: Okay, thank you, Your Honor.

3 MR. GERBER: Understood.

4 THE COURT: Okay, thank you very everyone.

5 We'll be adjourned for today. Have a good afternoon.

6 MR. SHAW: Thanks.

7 MR. GERBER: Thanks. Bye.

8 (Whereupon, the matter is adjourned.)

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## C E R T I F I C A T E

4 I, Carole Ludwig, certify that the foregoing  
5 transcript of proceedings in the case of MENZEL v.  
6 ROADGET, et al., Docket #24cv860, was prepared using  
7 digital transcription software and is a true and  
8 accurate record of the proceedings.

Signature Carole Ludwig

Carole Ludwig

Date: November 8, 2024